

1998

1 (The jury is out.)

2 THE COURT: Okay. How much more of this do  
3 we have? Thirty minutes of this witness, but what's  
4 this 20-minute video and an hour-plus video? Why do  
5 we have over an hour of a video? You remember what I  
6 told you about these videos.

7 MR. SCHULTZ: Yes, Your Honor. The 20-minute  
8 video is a video related to the Fisher RIMS system  
9 related to the priority of it. And that's the  
10 20-minute video. Then there's a video that is Laurene  
11 McEneny, and that is related to an entire system, the  
12 PO Writer System. That video was originally two hours  
13 and 20 minutes. The parties worked together and cut  
14 that down to an hour and a half, approximately.

15 THE COURT: You might be able to cut it down  
16 more over the weekend.

17 MR. SCHULTZ: Yes, Your Honor.

18 THE COURT: About 30 minutes. That's about  
19 all a jury can take of that. If it was NCIS or  
20 Housewives of Atlanta or whatever it is, they can  
21 handle something like that, but you can't take more  
22 than an hour and a half of this stuff. It's a hard  
23 dose.

24 You have a witness over here. She knows what  
25 she's talking about, and she relates, and they can

1999

1 handle that.

2 All right. Get them, please.

3 What are you doing with this witness? What's  
4 the purpose of this testimony?

5 MR. McDONALD: It's to show that the TV/2  
6 system is prior art.

7 THE COURT: It's anticipation.

8 MR. McDONALD: It's part of the obviousness  
9 determination.

10 THE COURT: Obviousness, excuse me. But we  
11 never did tell them that we were moving. I was trying  
12 to figure out what you were doing and I thought I knew  
13 what this was.

14 MR. McDONALD: You did say something about  
15 that. I thought that was the segue.

16 THE COURT: Yeah, but I didn't say now is the  
17 time, Charlie. Okay.

18 (The jury is present.)

19 THE COURT: All right. Ladies and gentlemen,  
20 I told you that they were about ready to move into  
21 invalidity, and they have been with this lady. They  
22 do have two of the inventors that are coming back. Is  
23 that right?

24 MR. McDONALD: I think we'll keep it to two.  
25 Maybe three, but probably two.

2000

1 THE COURT: Whatever. They have inventors,  
2 and it may have to do with infringement and  
3 invalidity, but now they have moved into invalidity.  
4 And what they are trying to do is -- that makes it  
5 sound like they flunked. I don't mean do that. I'm  
6 not making any comment.

7 The general topic is the issue of  
8 obviousness, which I think was talked about in the  
9 video, and I'll tell you more about it. But that's  
10 what they're doing. And we'll try to tell you as they  
11 move from one to another kind of topic they are  
12 addressing. Nobody will be arguing it, but at least  
13 it will help you focus on what the point is.

14 So we're now moving into obviousness with  
15 this witness, Ms. Eng. Okay.

16 This is your cross-examination.

17 MR. ROBERTSON: Thank you, Your Honor.

18

19 CROSS-EXAMINATION

20 BY MR. ROBERTSON:

21 Q Nice to see you again, Ms. Eng.

22 A You, too.

23 Q I understand that you were a consultant for Lawson  
24 in this case?

25 A Yes.

ENG - CROSS

2001

1 Q You indicated that you had spent five to ten  
2 hours. That was preparing for today's testimony?

3 A Reading the material and stuff, yes.

4 Q But you spent more time in the case than that,  
5 right? You were deposed back in May, I believe, of  
6 last year?

7 A When I saw you?

8 Q Yes.

9 A Yes.

10 Q You were also a paid consultant in a trial with  
11 SAP, right?

12 A Yes.

13 Q That was about what, four years ago now? 2006 or  
14 so?

15 A Was it? Okay.

16 Q It's difficult to remember back to just --

17 THE COURT: She tried to block it out.

18 THE WITNESS: Yes.

19 Q It's difficult to remember just back four years,  
20 nevermind what we've been talking about here 18 years  
21 ago, right?

22 A Well, that I did every day. The trial was just --

23 Q You'd agree with me, though, that TV/2 was not  
24 commercially available back in 1995, right?

25 A I think it was available from like '91, and then I

ENG - CROSS

2002

1 think it was discontinued in '94 or something. '95  
2 maybe.

3 Q You recall testifying under oath in the SAP trial?

4 A No. I mean I remember testifying, yes.

5 MR. McDONALD: Your Honor, I don't think this  
6 is impeachment. She's not denying that it wasn't on  
7 sale in '95.

8 MR. ROBERTSON: Let me --

9 THE COURT: Well, there was a different  
10 question, so I think it's a relevant approach. It  
11 depends on what the testimony was, doesn't it? The  
12 answer was different than the question. Fairly  
13 significantly. So let's see.

14 MR. ROBERTSON: May I hand the witness a  
15 notebook?

16 BY MR. ROBERTSON:

17 Q In the 1994-95 period, when you were working with  
18 Fisher right before, I think, you left in January of  
19 '95 --

20 A Yeah, I did.

21 Q -- fisher was the first customer really to use  
22 TV/2 in a production environment; isn't that right?

23 A As far as I know in the U.S.

24 Q Did any other customers to your knowledge ever use  
25 TV/2 in a production environment?

ENG - CROSS

2003

1 A I'm not sure about Volvo.

2 Q Volvo was this demonstration that was happening  
3 over in the U.K.?

4 A In the U.K.

5 Q You weren't involved in that, were you?

6 A I was not, no.

7 Q We're going to have to not talk over each other.

8 So just wait until I finish my question, then I'd  
9 appreciate your answer.

10 So it was written by people in the development lab  
11 in the U.K., right?

12 A Yes.

13 THE COURT: What was written?

14 MR. ROBERTSON: This TV/2 program.

15 A Yes.

16 Q Okay. And so it wasn't commercially available as  
17 far as you know, right, at that period?

18 A What do you mean by commercially available?

19 Q This program, this development lab program, they  
20 were working on in the U.K.

21 A I mean, you couldn't go to a Best Buy and buy it,  
22 but you could get it through an IBM group.

23 Q Let me ask you if you'd look -- there's a tab in  
24 your book that has your SAP testimony.

25 A Okay.

ENG - CROSS

2004

1 Q I'd like to direct you to page 1296.

2 A Where do I see the page numbers?

3 Q They should be in the upper right-hand corner.

4 THE COURT: There's a little fold on the  
5 squares on the pages. An in the upper right-hand  
6 corner of each one of those little quarters is the  
7 page number, Ms. Eng. And at the bottom is page  
8 numbers, and this one is on page 16.

9 THE WITNESS: Right.

10 THE COURT: Go ahead.

11 Q Do you see at page 1295 the question was asked:  
12 Was TV/2 a final release IBM product? You answered:  
13 No, I don't think so. I think Fisher was the first  
14 customer really to use it in a production environment.  
15 I had asked you that.

16 A Okay.

17 Q That's the time period we're in now.

18 A Uh-huh.

19 Q Was TV/2 an off-the-shelf product?

20 A Like I said, they couldn't go to Best Buy and buy  
21 it. It had to be packaged with service.

22 Q So the question was asked: So was it commercially  
23 available as far as you know? Do you see that?

24 A Right.

25 Q Let me finish my -- and the answer there was: No,

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2005

1 not as far as I know. Correct? Yes or no? That's  
2 what it says?

3 A That's what it says there, yes.

4 Q Okay. Thank you.

5 As far as you know, no one after Fisher ever used  
6 it in a commercial production environment, correct?

7 A I left so I do not know.

8 Q As you sit here even today, you don't know whether  
9 anybody ever used it after Fisher in a commercial  
10 production environment, right?

11 A I do not know.

12 Q Before working with Fisher, though, you were not  
13 aware of any other instance in which IBM integrated  
14 Technical Viewer 2 with a product to read large  
15 amounts of data; isn't that right?

16 A Before Fisher?

17 Q Yes.

18 A Correct.

19 Q Did I understand you to say that TV/2 didn't have  
20 a database, right?

21 A It didn't have a relational database.

22 Q It was a search program, wasn't it?

23 A TV/2 was -- that was one of the capabilities.

24 Q You worked on this project with Fisher, do I  
25 understand, from sometime in the middle of 1993 until



ENG - CROSS

2006

1 when you left in 1995?

2 A Well, I left in -- I probably didn't work any in  
3 '95, but, yes, through '94.

4 Q So approximately about a year and a half?

5 A Or a year and -- not quite a year and a half  
6 probably.

7 Q A little less than a year and a half?

8 A Yeah.

9 Q And the TV/2 that was integrated with Fisher, it  
10 went through serious significant modifications over  
11 that year and a half, wouldn't that be fair to say?

12 A I know they did add some features to make it  
13 work -- have better performance.

14 Q But you did a lot of things during that period of  
15 time on the project, correct?

16 A What do you mean by a lot of things?

17 Q You had to do a lot of modifications to bring this  
18 project to a conclusion eventually?

19 A Well, we changed a lot of the process to try to do  
20 it more efficiently, yes.

21 Q So, for example, you worked on a conversion tool.  
22 Do you remember that testimony in SAP?

23 A Yes.

24 Q That was an important aspect of coming up with a  
25 commercial or production prototype, correct?

ENG - CROSS

2007

1 A I think that the conversion tool was just for the  
2 Fisher data, to take it from their electronic version  
3 to the TV/2.

4 Q But you had to develop that; is that right?

5 A Yes.

6 Q You actually worked a lot on creating some new  
7 tags, didn't you, that needed to be programmed in  
8 order to be able to read some of the data? That was  
9 part of your job?

10 A Can you refresh my -- did I say something about  
11 new tags?

12 Q Didn't you work on tags during this project?

13 A We put the tags in, yeah. The way the generalized  
14 markup language works, you would put in there -- a tag  
15 was like a part number or paragraph or a table.

16 Q Did you actually have to create a new type of  
17 markup language, GML, as part of this project?

18 A No, I think that was already --

19 Q This conversion tool you talked about for this  
20 project, IBM never made that tool publicly available  
21 to anybody else; isn't that right?

22 A I'm sorry. Can you repeat that?

23 Q Sure. This conversion tool you just mentioned,  
24 IBM never made that publicly available to anybody else  
25 other than Fisher; is that right?

ENG - CROSS

2008

1 A Not to my knowledge.

2 Q Fisher contracted IBM to assist them in this  
3 project, right?

4 A To come up with a solution, yes.

5 Q Well, it contracted you to work with them?

6 A Right.

7 Q When they came with to you and presented you with  
8 this project, correct?

9 A Correct.

10 Q And are you aware that Fisher paid IBM \$620,000  
11 for this?

12 A I saw that in here.

13 Q Did you know that at the time?

14 A I don't remember. Probably. I think I've seen  
15 those documents before.

16 Q This Technical Viewer had proprietary tagging; is  
17 that right?

18 A It had a proprietary database. Probably some of  
19 the tags were not like the standard. We used the  
20 standard way to do it, but they probably had our own  
21 tags, yes.

22 Q Did you modify those tags to be able to  
23 formulate -- to be able to work in this project?

24 MR. McDONALD: Objection to the form of the  
25 question, Your Honor.

ENG - CROSS

2009

1 MR. ROBERTSON: Let me rephrase.

2 BY MR. ROBERTSON:

3 Q Did the tags have to be modified for this project?

4 A I don't remember.

5 Q Why don't you take a look then, if you could, Ms.  
6 Eng, at again your SAP testimony at page 1270.

7 THE COURT: The way this is usually done is  
8 to ask the question that you want to ask, and then  
9 say, You testified to such and such, and you were  
10 asked such and such, and said such and such; is that  
11 right? Does that refresh your memory? And if it  
12 doesn't refresh her memory and if she answers, you  
13 know. If it doesn't refresh her memory, then the  
14 document can't be introduced into evidence.

15 Do you want to try using it the standard way?

16 MR. ROBERTSON: I'll try that, Your Honor.

17 BY MR. ROBERTSON:

18 Q I think you indicated that you used GML or  
19 generalized markup language for tags for the  
20 information in this project, correct?

21 A We did.

22 Q There were also other specific TV/2 tags that were  
23 used to cull out and identify specific information  
24 that needed to be created as part of this project,  
25 correct?

ENG - CROSS

2010

1 A Right, and those were there, though. They were  
2 the ones that let you select the parts data or the  
3 table.

4 Q Do you remember working on a project that involved  
5 a shell?

6 A Yes.

7 Q And the shell had to be created as part of the  
8 presentation to make use of what's known as an  
9 application program interface?

10 A The shell was just like the menu like in the Volvo  
11 pictures we saw. And then the API was the interface  
12 between the programs.

13 Q Put you had to create a shell for this project  
14 with Fisher-Scientific, correct?

15 A We did because they wanted to have specific things  
16 there.

17 Q Those TV/2 tags weren't publicly available in  
18 1994; is that right?

19 A That's right.

20 Q In fact, isn't it the case that those TV/2 tags  
21 have never become available even to this day, right?

22 A Not that I know of. I mean, you would need TV/2  
23 to use them.

24 Q Did IBM ever make the TV/2 API publicly known or  
25 made available?

ENG - CROSS

2011

1 A I don't know that.

2 THE COURT: What did you say?

3 THE WITNESS: I don't know.

4 Q Did you give it to Fisher and nobody else?

5 A I'm sorry. I didn't hear you.

6 Q Did you give it to Fisher and nobody else?

7 MR. McDONALD: Objection.

8 THE COURT: Overruled.

9 Q I asked you did it ever become publicly known.

10 Let me ask you now, did you give it to Fisher and  
11 nobody else?

12 A There was a specific API for Fisher, yes.

13 Q Did you ever give the TV/2 API to anybody else  
14 besides Fisher?

15 A Not that I know of, no.

16 Q And the API is necessary for this project, right?

17 A If you want to integrate it with another system.

18 Q Did you also work on a compiler as part of the  
19 project?

20 A We used a compiler as part of the project.

21 Q That had to be created as part of this project as  
22 well; isn't that right? Did you testify about that at  
23 the SAP trial?

24 A The compiler was already there.

25 Q But you had to make special what are called .inf

ENG - CROSS

2012

1 files?

2 A Well, we had .inf files, but I think what we had  
3 to do is we added some features, and I think it talks  
4 about it in that one document, too. We added some  
5 features to make it faster.

6 Q As part of the Fisher --

7 A As part of the Fisher.

8 Q As part of the Fisher-Scientific project?

9 A Yes.

10 Q And you needed those .inf files for multiple  
11 catalogs; isn't that right?

12 A Yes.

13 Q I'm sorry. I didn't hear you.

14 A Yes.

15 Q Thank you.

16 Even after you had these .inf files containing  
17 data that was given to you, you still had problems  
18 searching them, didn't you?

19 A Well, it depended on the size of the file.

20 Q The bigger the file, the slower the search?

21 A Yes.

22 Q There were certain requirements as part of this  
23 project in order to be able to get search results back  
24 quickly, correct?

25 MR. McDONALD: Objection, Your Honor.

ENG - CROSS

2013

1 There's no relevance as to how fast the system is  
2 working.

3 MR. ROBERTSON: I'm just asking how T/V2 was  
4 modified for this project.

5 THE COURT: Overruled. She said it was  
6 modified for the project. The question is: How was  
7 it modified? He's going through the parts of it to  
8 see how they were modified.

9 MR. McDONALD: Well, i it's modified in a way  
10 that only relates to speed, there's no speed that's at  
11 issue in this case. So it's irrelevant for that  
12 reason.

13 MR. ROBERTSON: I think it's very relevant.  
14 It was a year and a half long project, Your Honor. A  
15 lot of things had to happen.

16 THE COURT: It depends the speed. It depends  
17 on a lot of things. Overruled.

18 BY MR. ROBERTSON:

19 Q You also had to complete a super index for the  
20 project, correct?

21 A That was related to making it faster.

22 Q Did you work on the super index?

23 A I mean, I talked to the people. I don't think I  
24 wrote that, no.

25 Q But you know that had to be created in order to



ENG - CROSS

2014

1 make the search faster?

2 A To make the search faster, yes.

3 Q And that was because there was so much data in a  
4 catalog like the Fisher-Scientific catalog, right?

5 A Correct.

6 Q You mentioned that you did a lot of scanning  
7 initially in the first few weeks of the project. Did  
8 I understand that right?

9 A Yeah.

10 Q But at some point in time Fisher-Scientific gave  
11 you the catalog in an electronic format, is that  
12 right, as part of the project?

13 A Yes.

14 Q And you could not have built this system to use a  
15 Fisher catalog unless you had something like the super  
16 index to make the search faster, right?

17 A Can you repeat that again?

18 Q Sure. Could you have built this system for use  
19 with the catalog like Fisher without using something  
20 like this super index?

21 A Could we have built it? We could have built it,  
22 the system, but it wouldn't be very usable.

23 Q And that would be because these searches would be  
24 so slow, it would be quicker to just look in the paper  
25 catalog, wouldn't it?

ENG - CROSS

2015

1 A Probably.

2 Q Those APIs we talked about with the TV/2, they  
3 were not publicly available in 1994, correct?

4 A They were specific for Fisher. They were just for  
5 Fisher.

6 Q Well, you were asked to look at Plaintiff's  
7 Exhibit No. 38, which I think is in either book, and  
8 you directed us to this --

9 THE COURT: In the book you have got, it's  
10 back near the back.

11 THE WITNESS: Thank you.

12 Q I think you directed us to this Fisher/IBM master  
13 schedule plan, do you see that?

14 A Yes.

15 Q Can you go to that page that ends with 53 there?

16 THE COURT: What page?

17 MR. ROBERTSON: Sorry. It ends 053. It's  
18 page 18 of 23, I think.

19 BY MR. ROBERTSON:

20 Q These are all the tasks that needed to be done for  
21 the original pilot. And then what was the second  
22 phase of the project?

23 A The first was demo, the second was the pilot, and  
24 the third was the comprehensive.

25 Q The comprehensive was supposed to be a working

ENG - CROSS

2016

1 prototype?

2 A No, it was everything done.

3 Q So this project, did you start right at this  
4 project from the beginning?

5 A Me?

6 Q Yes.

7 A Well, I was still on maternity leave when they  
8 first started, but when I came back I started.

9 Q When approximately was that?

10 A Probably --

11 Q Nine months backward?

12 A No. I had him in April, and I was supposed to be  
13 off for six months, but I did not stay off for six  
14 months. So it was a little bit before that.

15 Q Sometime in the summer then?

16 A End of the summer or in September.

17 Q I'd like you to just look at some of the things  
18 here generally. First, let me ask you, have you heard  
19 the expression Gantt chart?

20 A Yes.

21 Q Would you consider this to be a Gantt chart?

22 A Yes.

23 Q On this chart, there's a number of tasks that  
24 start out with a column that has an ID number, and it  
25 goes right through down to -- I'm going through pages

ENG - CROSS

2017

1 1 through 81; is that right?

2 A Yes.

3 Q So there are at least 81 separate tasks that had  
4 to be accomplished from the beginning of the project  
5 through to install, deliver, maintain, and enhance as  
6 requested by Fisher in task 81, correct?

7 A Correct.

8 Q You were aware that Fisher and IBM entered into  
9 what was called a nondisclosure agreement,  
10 confidentiality agreement?

11 A Right.

12 Q And you were aware that it was Fisher providing  
13 IBM with confidential information? If you know.

14 A I don't know.

15 Q You don't recall?

16 A I know that Fisher didn't want anybody to tell  
17 anybody else that we were building the system.

18 Q As part of that contract that IBM entered into  
19 with Fisher, they agreed that, for example, you  
20 couldn't work on any kind of project like this for any  
21 of their competitors, correct?

22 A I do remember reading that.

23 Q And it actually applied to some of the other  
24 people who worked on the project, right?

25 A Yes.

ENG - CROSS

2018

1 Q Do you recall if it applied to Mr. Rolland?

2 A Yes.

3 Q And I think it's a Mr. Gomola. Is that the right  
4 pronunciation?

5 THE COURT: You mean Gounaris?

6 MR. ROBERTSON: No, sir.

7 Q Since I raised the issue, why don't we take a look  
8 at it. If you'd go to Plaintiff's Exhibit No. 112.  
9 And this is what was called the pilot and  
10 comprehensive electronic sourcing system; do you see  
11 that?

12 MR. McDONALD: I think we have the wrong  
13 number.

14 A I can't find that.

15 Q I'm sorry. That's probably from an old case.  
16 It's PX 25. I apologize.

17 A Okay.

18 Q So just to confirm, will you go to the second to  
19 the last page of Plaintiff's Exhibit No. 25. Now, do  
20 you recognize Mr. Gounaris' signature there?

21 A No, not really.

22 Q Does it look like it says "Charles Gounaris"?

23 A Yes.

24 Q You'll see there is someone who signed on behalf  
25 of Fisher-Scientific there?

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2019

1 A Yes.

2 Q Do you know who that is?

3 A I think Frank Melly.

4 Q Frank Melly? You're aware that this is a patent  
5 infringement suit, right?

6 A Yes.

7 MR. McDONALD: Your Honor, I'll object to his  
8 using this exhibit with the witness. He hasn't laid a  
9 foundation and it's also outside the scope.

10 BY MR. ROBERTSON:

11 Q Have you seen this document before?

12 A I think you might have shown it to me before. I  
13 don't know.

14 Q You were aware about this --

15 THE COURT: Objection overruled.

16 Q You were aware about this restriction on you  
17 working for a period of two years after the close of  
18 this project because Fisher wanted to maintain this  
19 proprietary?

20 A I did know that Fisher did not want anybody else  
21 to know they were doing this.

22 Q Can you go to the page that ends 293 in this  
23 document. You'll see there's a little number, ePlus,  
24 and then there are some numbers at the bottom.

25 THE COURT: What number?

ENG - CROSS

2020

1 MR. ROBERTSON: It's 293, Your Honor.

2 Q Specifically, the third paragraph where it starts  
3 for a period of two years. Now, your maiden name was  
4 Pam Jenkins; is that right?

5 A Yes.

6 Q So it states here for a period of two years  
7 following the earlier of (a) completion of this  
8 statement of work, or (b) September 30, 1996, IBM will  
9 not assign the following employees: Harry Alexandra,  
10 Jim Gomola, Pam Jenkins, and Al Rolland, to provide  
11 electronic catalog application development services to  
12 the following organizations. Do you see that?

13 A I do.

14 Q Those organizations that are identified there are  
15 competitors of Fisher, did you know that?

16 A I do now know that.

17 Q Does it refresh your recollection now that  
18 Mr. Gomola worked on the project?

19 A It says his name, but no, I don't. He didn't work  
20 in Manassas.

21 Q What about Harry Alexander?

22 A That sounds familiar, but he didn't work in  
23 Manassas either.

24 Q Back to that Plaintiff's Exhibit No. 38, and if I  
25 could direct you back to that Gantt chart that had all

ENG - CROSS

2021

1 the tasks 1 through 81. Do you see there that there  
2 is divided responsibility for a lot of these tasks  
3 between Fisher and IBM; is that right?

4 A Right.

5 Q I don't want to go through all of them, but, for  
6 example, Fisher gave you some requirements for this  
7 project, didn't they?

8 A Yes.

9 Q And the first item was that IBM needed to take  
10 those requirements and definitize them for the  
11 electronic sourcing program, ESP. Do you see that?

12 A Uh-huh.

13 Q And then Fisher, you see, had responsibilities for  
14 the next task to get technical familiarization in  
15 performing system test requirements?

16 A Okay.

17 Q And I'll just go through some of the bold, bigger  
18 tasks. You understood that there were some big tasks  
19 and there were some sub tasks; is that how I should  
20 understand this document?

21 A That's correct.

22 Q So, for example, IBM had to verify data format  
23 requirements and define the conversion, right? So you  
24 see it's No. 6?

25 A Yes.



ENG - CROSS

2022

1 Q Is that accurate?

2 A Yes.

3 Q Down at No. 10, Fisher had to provide existing  
4 systems interface specifications, right?

5 A Yes, of course.

6 Q And No. 12, Fisher had to approve the existing  
7 systems interface specifications, correct?

8 A Because it was their system they had, yes.

9 Q I understand. No. 14 is Fisher had to definitize  
10 desired plan and hardware scenarios for ESP, which you  
11 identified as electronic sourcing program?

12 A Yes.

13 Q And system initial roll out, correct?

14 A Yes.

15 Q And then Fisher approved and recommended the ESP  
16 system typical configurations, correct?

17 A Correct.

18 Q Another big project had do with definitizing the  
19 distribution and maintenance procedures, right?

20 A I can't see that yet.

21 Q That's No. 18 at the top.

22 A Okay.

23 Q And IBM had responsibility for that, right?

24 A Yes.

25 Q And we're about tow months into the project now;

ENG - CROSS

2023

1 is that right?

2 THE COURT: Two months into the schedule. I  
3 think she said previously this was just a schedule.

4 Q Okay. For the 18 tasks, does it appear that the  
5 project or the schedule here for these tasks started  
6 sometime in November and ended sometime the following  
7 year in July?

8 A For the whole system?

9 Q For all these tasks.

10 A What does the last page say? I thought it was  
11 supposed to go out until the end of -- oh, maybe July  
12 is when it said it was supposed to finish, yeah.

13 Q So it was supposed to finish in July and it took  
14 longer than that?

15 A I think so, yes.

16 Q Because when you left in January of '95, it still  
17 wasn't completed?

18 A I think so.

19 Q Do you know how much longer it took after that?

20 A No.

21 Q Do you know whose property the project was, the  
22 final comprehensive ESP system, whose property that  
23 was at the end of this?

24 A It was all Fisher's data, so I assume it was  
25 Fisher's.

ENG - CROSS

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1 Q Just back to these projects again, some of the  
2 bigger projects here. No. 23, in order to build this  
3 ESP system, you had to verify, convert, process, and  
4 author Fisher data; do you see that?

5 A Yes.

6 Q And No. 24 is provide Fisher electronic text and  
7 image data for the demo ESP system?

8 A Correct.

9 Q That's a Fisher responsibility?

10 A Right.

11 Q That's the electronic catalog they gave you?

12 A Well, they didn't give us electronic catalog.

13 They gave us images and parts data.

14 Q You don't remember receiving an electronic catalog  
15 and a CD-ROM from a company called SteBo?

16 A If I read No. 26, it says convert the image data  
17 and then convert the text data. So I think we didn't  
18 get it all in one package. I think we got it in two  
19 separate things.

20 THE COURT: Just a minute. He was asking you  
21 a little bit different question. Do you remember  
22 getting something from a company called what?

23 MR. ROBERTSON: SteBo.

24 THE COURT: What was it that you're asking  
25 her if she remembered getting from SteBo?

ENG - CROSS

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1 MR. ROBERTSON: An electronic Fisher catalog.

2 THE COURT: So you remember such a thing?

3 THE WITNESS: I don't exactly remember if we  
4 got anything from SteBo.

5 BY MR. ROBERTSON:

6 Q But you do recall getting an electronic version of  
7 the Fisher catalog?

8 A Yes. We did not have to scan anymore, yes.

9 Q Did I understand you to say in response to my  
10 first question that you think you got it in two  
11 separate submissions?

12 A I thought we had the image data separately and we  
13 had to go back and match it.

14 Q That was one of the things you needed to do for  
15 this project?

16 A Well, we had to tag everything.

17 Q And you were involved in that, right?

18 A Yeah, at different times.

19 Q Is that the next task, 25, convert and tag Fisher  
20 electronic text data?

21 A I guess so.

22 Q Well, I don't want you to guess. Do you know or  
23 don't you know?

24 A Do I know if I exactly worked on 25, I don't know,  
25 but I did during the project do tagging for them.

ENG - CROSS

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1 Q Then you had to deliver a demonstration of the ESP  
2 system to Fisher representatives; is that right?

3 A Yes, that's correct.

4 Q Then the next thing you had to do was build this  
5 pilot electronic sourcing system, correct?

6 A Correct.

7 Q No. 39 was a Fisher task about the interface ESP  
8 with existing Fisher systems, correct? Do you see  
9 that, No. 39?

10 A Yes.

11 Q And that had to be done as part of the project?

12 A To interface with their inventory management, yes.

13 Q And you had to also verify, convert and process  
14 and author Fisher data as part of the project,  
15 correct?

16 A Correct. That's the same thing we had for the  
17 sample, just more data.

18 Q More data?

19 A Yeah.

20 Q Let me just go through this very quickly then. So  
21 No. 52, you had to build, test and demonstrate the  
22 pilot ESP system, correct?

23 A Yes.

24 Q You had to provide copies and field test pilot for  
25 the ESP system that's No. 58?

ENG - CROSS

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1 A Yes.

2 Q Then you had to start building a comprehensive  
3 electronic sourcing program system?

4 A Right.

5 Q As part of that, Fisher provided you with more  
6 electronic text and image data for this comprehensive  
7 system?

8 A Right. The way it worked was the demo was a small  
9 number of pages, and the pilot was more pages, and the  
10 comprehensive was full.

11 Q Was it the entire catalog at that point?

12 A I think so.

13 Q Then No. 74 was the build test and demonstrate the  
14 comprehensive system, right?

15 A Right.

16 THE COURT: While he's looking for something,  
17 this part of Exhibit 38 you're looking for starts with  
18 11/11 and ends with 7 something. The 11/11 is what  
19 year?

20 THE WITNESS: That would be '93.

21 THE COURT: Look at the front of the  
22 document. The first page. It's dated February of  
23 '94.

24 THE WITNESS: Right, but there are several  
25 versions of the same thing in there. Every time we

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1 came up with a new version, we put a new date. That  
2 wasn't the initial date. That was the date of this  
3 version because you'll see another one that says March  
4 something.

5 THE COURT: March.

6 THE WITNESS: So as you see, the 11/11 tasks  
7 are completed in this one because this is like a  
8 snapshot of February.

9 THE COURT: So it started in 11/11/93, and it  
10 was supposed to end in July of '95?

11 THE WITNESS: '94.

12 THE COURT: But it wasn't finish when you  
13 left in January of '95, whatever the schedule may have  
14 been?

15 THE WITNESS: Right.

16 THE COURT: Okay. Pardon me for the  
17 interruption.

18 THE WITNESS: No problem.

19 BY MR. ROBERTSON:

20 Q Okay. You were asked some questions about some of  
21 these brochures --

22 A Uh-huh.

23 Q -- that IBM had on this TV/2?

24 A Correct.

25 Q Let me direct you to Defendant's Exhibit No. 107.

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1 This is what I think you referred to as the brochure.

2 A Right.

3 Q Just confirm for me that this doesn't have a date  
4 on it.

5 A It doesn't have a date on it.

6 Q You weren't involved in the preparation of this  
7 document, correct?

8 A I was not.

9 Q Why don't you take a look at the document that's  
10 Defendant's Exhibit No. 230. You were asked questions  
11 about that; is that right?

12 A Yes.

13 Q You'd agree that this general information manual  
14 does not provide enough information for anybody as to  
15 how to integrate a TV/2 search engine with an  
16 electronic catalog, correct?

17 A It does not. It's just general information.

18 Q And none of those TV/2 special tags are described  
19 in the marketing brochure; is that right?

20 A Correct.

21 Q Neither of these two documents disclose markup  
22 language that would be used in any kind of project  
23 like the electronic sourcing project that IBM did with  
24 Fisher, correct?

25 A No, there's no tags in here.



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1 Q And there's no description of these .inf files in  
2 any of these documents that were necessary for the  
3 project?

4 A Not in these two documents.

5 Q There's no description in either of those two  
6 about this super index that needed to be developed in  
7 order to do quick searches in either of those two  
8 documents?

9 A Not in these documents.

10 THE COURT: These documents, are you talking  
11 about Defendant's 107 and 230?

12 THE WITNESS: I don't know what number. It  
13 was the one with the picture on the front that he just  
14 asked me to look at before this. It wasn't in that  
15 one either.

16 THE COURT: Okay.

17 Q There's no technical description in this general  
18 information manual as to those things as well. That  
19 was Defendant's Exhibit No. 230, right?

20 A There's no technical information, no.

21 Q This wasn't intended to show somebody how to  
22 construct a system like the electronic sourcing system  
23 project, correct?

24 A No, that was something else. This was just the  
25 general information for if you're looking at it.

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1 Q That something else was documentation that was  
2 part of the electronic sourcing project, correct?

3 A Well, no, it came with TV/2.

4 Q I thought I understood you to say that TV/2 wasn't  
5 in commercial production until the electronic sourcing  
6 project with Fisher; isn't that right?

7 A If commercial means you can buy it off the shelf,  
8 no, but it was available to use in a service.

9 Q We haven't seen any of those documents, have we,  
10 that you're referring to?

11 A They are not here, no.

12 Q You're aware that IBM has never claimed to be an  
13 inventor of these patents that are in suit, right?

14 A I'm not aware --

15 MR. McDONALD: Objection, Your Honor. Beyond  
16 the scope. Irrelevant.

17 MR. ROBERTSON: I don't think it's beyond the  
18 scope, Your Honor. I think --

19 THE COURT: Well, I'm not sure what relevance  
20 it has. Sustained.

21 MR. ROBERTSON: Thank you. That's all I  
22 have, Ms. Eng.

23

24

25

1 REDIRECT EXAMINATION

2 BY MR. McDONALD:

3 Q Ms. Eng, do you have the transcript that's first  
4 tab in that binder that Mr. Robertson gave you from  
5 your testimony in 2006?

6 A Yes.

7 Q Can you turn back to that page 1296 that  
8 Mr. Robertson directed you to?

9 THE COURT: Are you going to do it right?  
10 You have to do it right, too. All of you do.

11 MR. McDONALD: I hope so.

12 THE COURT: Just pointing her to a deposition  
13 and reading it in doesn't get the job done. It can't  
14 come in that way. That isn't how you do it.

15 Q Ms. Eng, in the year 1992, was the TV/2 system  
16 being offered for sale by IBM?

17 MR. ROBERTSON: Objection, Your Honor. This  
18 was asked on direct examination. It's just going over  
19 prior testimony.

20 THE COURT: Well, I think there was some  
21 confusion engendered as a result of your last question  
22 and he's trying to straighten it out.

23 THE WITNESS: I can answer?

24 THE COURT: Yes. Sorry.

25 A It was available for people to use as a service

ENG - REDIRECT

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1 and to use as a solution, but you couldn't go into a  
2 store and buy it.

3 Q Could you buy it if you bought it together with  
4 the services?

5 A Yes.

6 Q That was in the year 1992, correct?

7 A Yes.

8 Q So when you were asked about it being commercially  
9 available, I think you indicated it was not  
10 commercially available?

11 A Right, and I think I said you can't go buy it off  
12 the shelf.

13 Q So when you said it wasn't commercially available,  
14 you were talking about getting it off the shelf at  
15 Best Buy, right?

16 A Correct.

17 Q So in the year 1992, you were out there marketing  
18 and selling the TV/2 system?

19 MR. ROBERTSON: Objection. That's been asked  
20 and answered and it's leading now.

21 MR. McDONALD: I'm trying to clarify.

22 THE COURT: It is leading and it has been  
23 answered and asked. She's been through all that. You  
24 don't use redirection to go back and cover everything  
25 that you covered in direct. You use it to address the

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1 things that were raised in cross that you need to deal  
2 with. That way we aren't here forever.

3 BY MR. McDONALD:

4 Q Ms. Eng, I think you indicated that the TV/2 in  
5 1992 did not have a relational database; is that  
6 correct?

7 MR. ROBERTSON: Objection. First, that's  
8 leading, and that was asked and answered in direct.

9 THE COURT: Sustained. And on cross the same  
10 way.

11 BY MR. McDONALD:

12 Q What type of database did the system have in 1992,  
13 if any?

14 A It had the .inf file. It had, I would say, a  
15 proprietary database because it was more like a flat  
16 file database, a flat file with indexes.

17 THE COURT: What do you mean by proprietary  
18 database?

19 THE WITNESS: Like it wasn't -- it was  
20 specific for IBM. They made up the file format.

21 THE COURT: I see.

22 BY MR. McDONALD:

23 Q What's the difference between that type of  
24 database and a relational database?

25 A Well, a relational database is what most people

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1 use now and there's a lot more search features. The  
2 way it's stored.

3 Q So in the 1992 version of the database, the TV/2,  
4 that could be searched?

5 A It could be searched.

6 Q Did it have an index?

7 THE COURT: What's "it"?

8 Q Did the database used in the TV/2 system in 1992  
9 have an index?

10 THE COURT: Let me tell you, what you're  
11 doing is you're flipping from one question has  
12 relational and then "it" comes up in the next  
13 question, and then relational, and then "it." So the  
14 build is suggesting that TV/2 has a relational  
15 database, and she said at least three times now that  
16 it did not have a relational database.

17 MR. McDONALD: Maybe I misspoke.

18 THE COURT: Strike all of that. We're not  
19 going to pay any attention to that now. And I don't  
20 think we're going to go any further if we can't get it  
21 straight this time. This is it.

22 Now, if you want to ask the question, that's  
23 fine. But get it done, and don't be using the  
24 alternate form of the indefinite pronoun trying to  
25 shift from one system to the other. It's hard enough

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1 for the jury to follow without the specificity that  
2 I'm telling you you have to have.

3 BY MR. McDONALD:

4 Q Did the TV/2 database sold with the product in '92  
5 have indexing in it?

6 A Yes.

7 Q What time frame were those modifications  
8 Mr. Robertson was talking to you about occur?

9 THE COURT: Which ones?

10 MR. McDONALD: All of them.

11 THE COURT: He went through about 15 of them,  
12 20. They didn't all occur on the same day, I gather,  
13 from the sequence of events that she was describing.

14 BY MR. McDONALD:

15 Q Ms. Eng, did all of those modifications that  
16 Mr. Robertson talked about occur after 1992?

17 MR. ROBERTSON: Objection, Your Honor,  
18 leading. This is an important issue right here.

19 THE COURT: Sustained.

20 BY MR. McDONALD:

21 Q Ms. Eng, were those modifications that you  
22 discussed related specifically to the work with  
23 Fisher?

24 THE COURT: There were a lot of  
25 modifications, and I think you're talking about the

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1 modifications in the chart that is at the back end of  
2 exhibit -- whatever it is. So you need to be more  
3 specific so that we understand what you're talking  
4 about.

5 BY MR. McDONALD:

6 Q Let's talk about those modifications in that Gantt  
7 chart that you testified earlier. Is it your  
8 understanding that the questions Mr. Robertson asked  
9 you about modifications related to activities that  
10 were depicted in that chart or not? You may answer.

11 A The modifications that he was talking about were  
12 in there somewhere. They weren't like a line item  
13 form.

14 Q But they are part of the activities involved with  
15 what's depicted in the chart; is that fair?

16 A Yes.

17 Q That was all activity that happened after 1992 or  
18 before?

19 A After '92.

20 Q So in my questioning of you when I asked you about  
21 the 1992 version of the product, none of those  
22 questions about modifications pertained to what the  
23 product looked like in 1992; is that correct or not?

24 MR. ROBERTSON: Objection. This is vague as  
25 to the product. I don't know what we're talking



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1 about. Are we talking about T/2 as modified?

2 THE COURT: Sustained.

3 BY MR. McDONALD:

4 Q Did any of the modifications on the Gantt chart  
5 relate to anything done to the product as it existed,  
6 the product being the TV/2 product, as it existed in  
7 1992?

8 A No.

9 Q Do you recall being asked by Mr. Robertson about  
10 the application program interface API for Fisher?

11 A Yes.

12 Q Did the TV/2 system in 1992 have developed any  
13 application program interfaces for any applications  
14 other than Fisher?

15 MR. ROBERTSON: This was asked on direct,  
16 Your Honor.

17 THE COURT: I think you have already answered  
18 all that. He asked about it in connection with 1993  
19 and 494. Sustained.

20 BY MR. McDONALD:

21 Q Did the Navy project that you referred to, did  
22 that have an application program interface or not?

23 MR. ROBERTSON: I didn't ask anything about  
24 the Navy project on cross-examination. Outside the  
25 scope.

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1 THE COURT: Sustained.

2 MR. McDONALD: All right. I have no further  
3 questions. Thank you.

4 THE COURT: Can she be permanently excused,  
5 Mr. McDonald?

6 MR. McDONALD: Yes.

7 THE COURT: Mr. Robertson.

8 MR. ROBERTSON: Yes.

9 THE COURT: Thank you for being with us, Ms.  
10 Eng, and giving us your testimony, you're released  
11 from your obligation to be here.

12 (The witness was excused from the witness  
13 stand.)

14 MR. McDONALD: We have a 20- or 25-minute  
15 video, Your Honor, if you want to do it.

16 THE COURT: Who is it?

17 MR. McDONALD: It's Ms. O'Loughlin regarding  
18 the RIMS system as prior art in 1992.

19 THE COURT: Well, let's go ahead and play it.

20 MR. ROBERTSON: I object to the  
21 characterization of what it's going to depict, Your  
22 Honor. I mean, that's very important.

23 THE COURT: It addresses the subject of  
24 invalidity in general. Is that fair?

25 MR. ROBERTSON: Yes.

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1 THE COURT: Their theory of invalidity.

2 MR. ROBERTSON: Yes.

3 THE COURT: Who is this, Mr. McDonald?

4 MR. McDONALD: Johanna O'Loughlin.

5 THE COURT: Do you want to spell all that?

6 MR. McDONALD: J-o-h-a-n-n-a

7 O-apostrophe-L-o-u-g-h-l-i-n.

8 (A videotaped deposition of Johanna  
9 O'Loughlin is now being played.)

10 THE COURT: Stop it. Call out the  
11 plaintiff's exhibit number when you refer to the  
12 deposition exhibit, so we'll all understand what it  
13 is. What's the plaintiff's exhibit number this.

14 MR. ROBERTSON: It's a defense exhibit.

15 THE COURT: Whatever.

16 THE CLERK: Defendant's 40.

17 MS. HUGHEY: Are you asking what is the video  
18 going to be marked as an exhibit?

19 MR. CARR: What exhibit is it in this case?

20 MS. HUGHEY: DX 62.

21 THE COURT: DX 62. It's a Fisher RIMS  
22 trademark application. What is it? I can't read it.

23 THE CLERK: They called it a service mark  
24 principle register.

25 THE COURT: All right.

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1 MS. HUGHEY: Same exhibit, DX 62.

2 This is DX 212.

3 This is DX 213.

4 This is DX 211.

5 THE COURT: All right, ladies and gentlemen.

6 We'll see you all on Tuesday morning. We'll start at

7 nine o'clock. Have a nice weekend. Drive carefully

8 and just leave your pads with Mr. Neal.

9 Now, they've worked out an arrangement. I  
10 don't know how Mr. Neal and others did it, but if you  
11 want to eat in the cafeteria for lunch downstairs in  
12 the basement, you can do that and it won't cost you  
13 anything.

14 What do you give them?

15 THE CLERK: We're going to tell them Tuesday  
16 morning. Monica will tell them. It's very simple.

17 THE COURT: Or you can bring your own lunch  
18 or you can go out on your own. It's your choice.

19 Have any of you been to the cafeteria. They  
20 have warm foods and sandwiches and a salad bar. There  
21 you go.

22 Thank you very much. Have a nice weekend.

23 A JUROR: Thank you for the donuts.

24 (The jury is exiting the courtroom for the  
25 evening.)

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1 THE COURT: All right. Somebody tell me why  
2 it was important to establish that the former general  
3 counsel of the company didn't know what she was  
4 talking about or anything else. Why was that put in?

5 MR. ROBERTSON: Your Honor, I offered to  
6 stipulate to all of those documents to avoid playing  
7 the deposition. I said we could but in the  
8 application, the annual reports, and all that.

9 MR. McDONALD: It's news to me, Your Honor.  
10 I don't remember Mr. Robertson ever doing that. I  
11 would have loved to have streamlined that and get the  
12 facts in about the trademark application that she  
13 signed verifying that the RIMS system was on sale in  
14 1992. That was the only purpose of that. We tried to  
15 find another way to do it and we couldn't.

16 MR. ROBERTSON: I would have stipulated to  
17 that. That's what I told him.

18 THE COURT: We wasted the jury's time. What  
19 is this thing we're going to do for an hour in the  
20 next deposition? What is it?

21 MR. McDONALD: This is a witness on the PO  
22 Writer prior art.

23 THE COURT: Who is it?

24 MR. McDONALD: Laurene McEneny. And she's  
25 going to establish the features of that product and

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1 that it, too, was on sale more than one year before  
2 the filing date on the patent involved in the law  
3 suit.

4 THE COURT: Do you stipulate that the PO  
5 Writer was on sale for --

6 MR. ROBERTSON: It's the details of it, Your  
7 Honor, that's important. The PO Writer, Your Honor  
8 has already dealt with at least two of those exhibits,  
9 DX 121 and DX 122.

10 MR. McDONALD: We're not talking about those  
11 here.

12 MR. ROBERTSON: What I'm talking about is the  
13 details of what PO Writer are are important. But we  
14 don't have -- we'll take a look at it and try to  
15 whittle it down as much as possible as the Court has  
16 suggested.

17 There's one document left with respect to PO  
18 Writer, and I don't think even Lawson is contending  
19 that it anticipates a claim. Excuse me. There are  
20 three claims, I apologize, out of the 12 that says  
21 anticipate.

22 So there is some devil in the details, Your  
23 Honor, with respect to that. I think we both agree on  
24 that since both parties took Ms. McEneny's deposition.

25 THE COURT: Is this the end of your

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1 depositions?

2 MR. McDONALD: That will be. The McEneny one  
3 will be the last one.

4 THE COURT: It's an hour and a half. Then  
5 what's next?

6 MR. McDONALD: What's next is we have the  
7 inventors are starting, I think, on Tuesday. Mr.  
8 Shamos coming back. Mr. Staats won't be until  
9 Wednesday, I think. We're going to try to get two of  
10 the inventors and Mr. Shamos on Tuesday. So then  
11 Wednesday is Mr. Staats who is J-CONN prior art. The  
12 third inventor, if necessary, will be Thursday, if  
13 necessary. We could get the third inventor, if  
14 necessary, on Wednesday. It may not be necessary.

15 So we could be close to wrapping up, I think,  
16 on Wednesday.

17 THE COURT: All right. Well, just remember  
18 that the jury has to pay attention to this, and it's  
19 better if it moves. And I'm sure they couldn't  
20 understand why a lawyer standing up there and  
21 answering questions about something she doesn't  
22 remember, doesn't really know anything about, and is  
23 not able to talk about, and yet she is not  
24 technologically able.

25 All right. Lawson, will you-all come up here

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1 and get these binders that you sent up here at the  
2 very beginning, not now, because you-all are both  
3 adopting a new mode, and I need the space to put in  
4 the exhibits that you are using.

5 I'd like to say that I'd like to commend, and  
6 it's obvious to me there's been some hard work put in  
7 by the legal assistants in this case. There have been  
8 very few problems, and when there have been problems,  
9 they have been solved immediately. And you can't do  
10 that unless you know what you're doing.

11 And the IT people, I think you-all have done  
12 a fine job, too. Of course, the lawyers. I don't  
13 mean to take anything away from you, but I remember  
14 well who does most of the work.

15 MR. McDONALD: Your Honor, just one more  
16 thing with respect to that last video that Ms. Huey  
17 would like to offer.

18 MS. HUGHEY: I'd like to offer it as  
19 Defendant's Exhibit 401.

20 THE COURT: What is it?

21 MS. HUGHEY: This is the transcript of what  
22 was read in. My understanding is that  
23 Ms. O'Loughlin's deposition transcript was read in, I  
24 believe, and it will be marked as an exhibit for the  
25 record.



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1 THE COURT: Any objections? It's admitted.

2 THE CLERK: What number is that?

3 THE COURT: 401. Defendant's 401.

4 (Defendant's Exhibit 401 is admitted into  
5 evidence.)

6 THE COURT: All right. Anything else anybody  
7 has so we can get ready to go on Tuesday morning?

8 MR. McDONALD: Nothing else, Your Honor, for  
9 the defense.

10 THE COURT: All right.

11 MR. ROBERTSON: Sorry, Your Honor. I didn't  
12 hear you.

13 THE COURT: I just want to know if there's  
14 anything else so that we can solve it and get going  
15 and actively out of the box at nine o'clock Tuesday  
16 morning.

17 MR. ROBERTSON: Nothing by the plaintiff.

18 THE COURT: Okay. That sounds good. All  
19 right.

20

21 (The proceedings were adjourned at 5:20 p.m.)

22

23

24

25